Supreme Court, U. S.
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No. 77-917

In the Supreme Court of the United States

OCTOBER TERM, 1977

WHITESIDE & COMPANY, ET AL
Petitioners
v.
NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF TO
BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION
Opposition (March 1978)

NO BRIEF FROM NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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No. 77-917

In The Supreme Court of the United States
October Term 1977
Petition for a Writ of Certiorari For U.S. Fifth Circuit

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CITATIONS

(a) SEC, Rel. No. 9856, 15c 3-3 (e) (3); 15c 3-3 (g)
(b) SEC, Rel. No. 12656/June 22, 1976
(c) SEC, Rel. No. 12565/June 22, 1976
(d) SEC, Rel. No. 10756/April 26, 1974, page 2
(e) Fifth Circuit Court, No. 76-3318, page 5a (2) & (3)
(f) NASD Decision, Tx. 248 P. App. (g) and (h)
(g) Petitioners' Appendix (m) and (n)
(h) NASD Manual, Art. III, Sec. 1, Par. 2151
(i) NASD, Manual, Art. IV, Sec. 3, Par. 2203

HISTORY

1. On February 7, 1975, NASD District 6, Complaint No. Tex 248, rendered its Decision, with itself improperly as Complainant, against Petitioners with Penalties of fine, sanctions, censure and hearing costs (court functions) for alleged infractions of SEC Rule 15c 3-3 (e) (3). Petitioners' Appendix (i) - Decision: P. Appendix (h).

2. On September 22, 1975, NASD Board of Governors' Appeal, Decision affirmed the District Committee findings and assessed additional costs, and changed the basis of previous Decision. - P. Appendix (g).

3. With SEC Release No. 12656/June 22, 1976, SEC dismissed review proceedings, returning to the NASD, Board of Governors Decision, P. Appendix (p) - also public record of SEC Releases.

4. Accompanying the above, SEC Release No. 12565/ June 22, 1976 gave an opinion based on the record of proceedings before the NASD, plus a lengthy discussion as the "first interpretation of Rule 15c 3-3." - P. Appendix (o) - also public record of SEC Releases.

5. On August 18, 1977, the Fifth Circuit Court of Appeals, No. 76-3318, Summary Calendar, Per Curiam, pages 5235-5339 - P. Appendix (b) - in detail: Administration Office, U.S. Courts - West Publishing Company - Affirmed the order of the Securities and Exchange Commission which returned to NASD, Board of Governors Decision, Affirmed, based on the record of proceedings before the NASD..

6. By first amended motion, Petitioners asked of the Fifth Circuit relief of sanctions, fines and costs, and

awarding to Petitioners of reimbursement of reasonable costs on the grounds of improper decisions and responsibility plus faulty interpretation of the Rule 15c 3-3 (e) (3) and true facts surrounding the computation and Deposit **as of** June 30, 1974. We do not believe this motion has been properly acted upon.

RESTATEMENT OF THE PETITION FOR A WRIT OF CERTIORARI

A. 1. SEC Release No. 12565/June 22, 1976, Section 4, last paragraph, page 5 (34-12565) states the following: "This is the first case in which we have interpreted the provisions of Rule 15c 3-3." It is of national importance to thousands of security dealers, a most important industry, and the time of the U.S. Supreme Court is warranted.

2. The NASD Decisions were not supported by correct, "substantial and convincing evidence," evolved by adequate investigation, nor the wording of Rule 15c 3-3 (e) (3) and applications of the provisions of SEC Release No. 10756/April 26, 1974, page 2.

3. The SEC did not make independent investigation of the correctness of "substantial and convincing evidence," or properly intrepret the Rule 15c 3-3 or apply SEC Release No. 10756.

4. Fifth Circuit Court of Appeals did not make independent inquiry of the correctness of "substantial and convincing evidence," nor Rule 15c 3-3 and SEC Release No. 10756.

5. Who should make adequate inquiry?

B. 1. That Petitioner's Original Brief, timely filed December, 1977, called attention to sufficient

number of errors and misstatement of facts to indicate that Decisions were not made on the basis of correctness of "substantial and convincing evidence."

2. That, no reply brief has been filed by the National Association of Securities Dealers, Inc., a private corporation, the original complainant, to which SEC Release No. 12656/June 22, 1976 Dismissed Review Proceedings.

3. That brief for the Securities and Exchange Commission in opposition, March 1978 merely historically repeated a large number of incorrect statements negating the basis of "substantial and convincing evidence."

C. Petitioner's reply brief will list a large number of incorrect statements, not all inclusive, but sufficient to warrant an inquiry into "substantial and convincing evidence," plus the legal basis of the Complaint and Decisions in Argument.

FALSE STATEMENTS MADE

1. Formula Computations are not to be made **at** or **on** last day of month but **as of** the last business of the month like any Balance Sheet. NASD Decisions, affirmed SEC and Fifth Circuit.

2. Deposits of not less than 105 per centum of the amount computed are not to be made no later than one hour after opening of banking business on the second business day following (the last day of the month). The parenthesis signifies an improper addition. Time of deposit is tied to time of computation.

3. The requirement for the computation to be made between the last day and 10:00 a.m. 2nd day of the following month is **not correct.** Even, if so, it would be a negation of NASD Decisions. If the computation was made the first day of the month, deposit would be no later than 10:00 a.m. the third day; before 10:00 a.m. the 2nd, the deposit on the 4th day.

4. It is incorrect to state that telegraphic notices of no deposits before 10:00 a.m. the second day of following month were necessary after 10:00 a.m. that day and as a result, Respondents were in violation as charged by NASD. It is false and incorrect to state Respondents admitted their fault in not making timely deposits.

5. The ignoring of SEC Release No. 10756/April 26, 1974, page 2 in respect to data coming from the Midwest Clearing Corporation, a most important correspondent, is a gross mistake.

6. It is incorrect that only after the Association (Mr. Neal Jones) contacted Respondents on July 11, 1974 did they take action by making a subsequent computation and deposit - Mr. Neal Jones was conspicious by his absence from January 7, 1975 NASD hearing to confirm this conversation.

7. Respondents did not violate Article III, Section 1 of NASD manual by "acts contrary to high standards of commercial honor and just principles of trade." No trade was involved.

8. That ". . . even after Respondents were able to compute the reserve requirement . . . the additional required deposits were not even made" is false as Respondents did timely make the deposits on July 11, 1974. At least NASD recognized that the computation could not be made on June 30, 1974.

9. It is incorrect to charge willful and non-cooperative **attitude** that Respondent did not make deposit even though they had sufficient funds to make them. Attitude was the most important appeal by NASD to the SEC.

10. Respondents have no evidence that they were "cautioned" once by examiners and once by letter in 1973.

11. Charge that Respondents by its procedure of July 11, 1974, permitted the firm to use $43,793 to which it was not entitled during the early part of July is false as customer liabilities were paid during the lag period.

12. It is false that customer payments before due date is a customer cash liability or a fail to receive in formula, excused by SEC, confirmed by Fifth Circuit, Decision Aug. 18, 1977, pg. 5a (2).

13. It is false that customer payments before due dates are payments for purchases not made as stated in all Decisions.

14. It is false, accused by NASD Decisions that Whiteside Computations were made at or on June 30, 1974 and the last day of any month. (Actually made 7/09/74).

15. It is regrettable that SEC submitted to Fifth Circuit Court a brief with many misstatements of facts and an Appendix that was edited, abbreviated, manufactured and falsified from the true facts of this case.

16. Such a misquote as on page 9 of Opposition Brief, March 1978, quoting William Whiteside, who was not at the January 7, 1975 Hearing NASD Committee, that "we erred"; that is, in not making a deposit when the subject being discussed was the compo-

sition of the computations. Clarence was the one there and he recorded the meeting on a Compact Cassette.

17. The hearing before the SEC Commission is grossly misquoted, confirmed by Mrs. C. Whiteside who was in the audience, and in reply to our written inquiry for a copy of the record taken that day a staff person, via telephone conversation, informed us no record existed.

18. It is an error that excessive (more than 105%) is advisable, or required. In fact, the formula is so designed that a two to one cash ratio is required to cash customer liabilities - one dollar in Reserve Special Deposit and one dollar required on hand to liquidate cash customer liabilities before "retrieving" from the Special Deposit by subsequent computation.

19. Excuses and mitigating circumstances are grossly misstated and related as avoidance. Respondents have not avoided responsibility. Often our fault was listening to so much uninformed and incorrect advice. We do not claim to be experts on Rule 15c 3-3 and we have yet to meet the person who fully understands it.

20. As stated to the committee on January 7, 1975, Respondents do not understand the secrecy of its meeting, August 22, 1974, and others where our case was discussed. Also the withholding of Littlepage and Watkins Examination Reports, and those since, in view of the Freedom of Information Acts. (This is still going on).

21. Staff computations incorrectly included proprietary accounts and others.

22. A broker cannot be placed in an option position in respect to Cash Payments before due date from the customer - cash or securities for purchase already made, setting the due date by regulations. Money is going to the other broker and it was proven to have been done by testimony to NASD District Committee including copies of confirmations. These payments were in "end of month balance sheets" - having been recorded.

23. This is the first case in which the SEC has interpreted the provisions of Rule 15 c 3-3. What about equal notice to Respondents? Making the Rule, interpreting the Rule, enforcing the Rule is too much for any Agency and Commission.

24. Can Respondents operate its home office in Lubbock and abide by NASD and SEC interpretations, to make deposits before their amounts can be computed, to put extra burdensome restrictions on some for the benefit of others, to restrain trade? Surely Congress does not agree with these interpretations which are contrary to the wording of the Rule. Can anyone explain Notes A & B of Formula? Or why Margin Accounts are more valuable than cash which is not in Formula?

25. Without investigation by either SEC or Fifth Circuit of essential facts Decisions are "ditto" related, oblivious to Petitioners' Briefs and Appendices to the contrary.

ARGUMENT

1. Since the SEC dismissed Petitioner's appeal, SEC Release No. 12656/June 22, 1976, thus returning this matter to the National Association of Securities Dealers, Inc., a private corporation, the petition to the Fifth Circuit Court of Appeals and petition for a Writ of Certiorari from the U.S. Supreme Court to the Fifth Circuit Court were directed to NASD, which gave no Reply Brief to Fifth Circuit or the Petitioners for a Writ of Certiorari.

2. The request for a Writ of Certiorari is based primarily on (a) presentations to Fifth Circuit containing numerous misstatements of facts, (b) an appendix of record, edited and abbreviated, in many instances, manufactured and misleading, (c) misinterpreted for that Court the actual wording of the Rule 15c 3-3 (e) (3), (d) very importantly ignored SEC Release No. 10756 and Rule 15c 3-3 (g) as applying to Petitioners, and (e) improperly endorsed the Complaint Procedure of NASD and its assumed Court functioning in respect to penalties, which even the SEC did not have in respect to Rule 15c 3-3.

3. NASD did not present a brief to Fifth Circuit and has not presented a Brief in respect to the request for a Writ of Certiorari. A Brief from the SEC in opposition to the latter is recognized.

4. In 1974, during the NASD alleged violations, NASD was not the regulatory authority charged with the task of examining Petitioner's financial responsibility, and therefore not subject of Notice of Failure, Rule 15c 3-3 (i) regardless of SEC statement (opposition - argument 2nd paragraph, page 8, March 1978) to wit: ". . . that notice of their failure to make the

necessary deposit had not been given to the NASD," for as of June 30, 1974 computation.

5. NASD was not empowered to file the complaint against petitioners.

   (a.) Firstly, NASD was not the "regulatory authority charged with the task of examining Petitioner's responsibility" - Midwest Stock Exchange was that authority.

   (b.) NASD requirement of its Form "M" report has never been authenticated.

   (c.) Even NASD's Manual does not authorize its Committee to file such a complaint as Tex No. 248.

      (1) Its Rules of Fair Practice, Article III, Section 1, and "Code of Procedure" is for handling trade practice complaints - the "Business Conduct of Members." Rule 15c 3-3 is not a trade practice Rule, but an internal, comingling, setting aside a general reserve in respect to alleged customer liabilities.

      (2) Complaints of trade practice alleged infractions must be made by individual (person), public or member, customer or broker, request of a member.

      (3) Complaints by District Business Conduct Committee "shall be handled in accordance with the Code of Procedure and in the same manner as if had been filed by an individual or member." No individual or member has been identified as making a complaint on Petitioners, nor what individual has been aggrieved on account of Petitioner neces-

sitating a Business Conduct Committee Complaint. (Article IV, Section 3, paragraph 2203, NASD Manual). The complaint is not autorized by NASD Manual.

(4) Furthermore, Code of Trade Practice Complaints, Paragraph 3022, Section 23 NASD Manual provides "No member of the Board of Governors, or any District Business Conduct Committee or any Local Business Conduct Committee shall in any manner, directly or indirectly, participate in the determination of any complaint affecting his interest or the interest of any person in whom he is directly or indirectly interested."

Thus, any direct competitor had an interest at least indirectly in Hearing Tex 248; at least three out of four were direct competitors and were ineligible.

6. NASD's Manual Provision for Penalties, which are far reaching encroachments on a person's personal and professional rights, are illegal invasions of Court responsibilities.

(a.) Webster's definition of a penalty is as follows: "The suffering in person and property which is annexed by law or judicial decision to the commission of a crime, offense, or trespass, as a punishment; penal retribution."

Since Rule 15c 3-3 is regulatory and not penal - per curiam, August 18, 1977, decision of Fifth Circuit Court of Appeals, page 5a (3) - penalties cannot be applied by NASD.

Article V, Section 1, paragraph 2301, NASD Manual does not provide as a penalty the assess -

ment of "costs" and is not definite in the "and/or" assessment of censure, up to $5,000 fine etc." What does "and/or" mean?

7. The NASD Decision, February 7 1975 besides being indefinite, violates numerous SEC Rules and Releases:

(a.) NASD has no authority to make computations of Formula for rule 15c 3-3, that responsibility was the Petitioner's, including statement of deposit required. Petitioners made these computations when data was available to do so (as per SEC Release No. 10756/April 26, 1974, page 2) as follows:

Whiteside Computation

As of Date	Comp. Date	Dep. Bal.	Dep. Req.
1/31/74	2/04/74	$36,622.04	None
5/31/74	6/07/74	9,436.38	None
6/30/74	7/09/74	9,061.91	$37,923.56

MCC Reports received 7/08/74 and posted as per SEC Release No. 10756 (so confused was MCC during this period that cash figures were not even available via telephone.)

After correctly stating SEC Rule 15c 3-3 (e) (3) page 15, computation **as of** the close of the last business day of month it moved Petitioner's back to **June 30, 1974** and was not only an error but a misstatement of the Rule. Under no circumstances could the computation be made at June 30, 1974, before the close of the month and day, and was not Rule 15c 3-3 required. If computation was meant to be **at** then why does it not so state?

(b.) The NASD has tried to add illogically "after the end of month" to the following: " . . .

if a deposit is required that it be made no later than one hour after opening of banking business on the second following day (after the end of the month.)" After the end of the month is simply not in the Rule and was added for Complaint and Decision basis.

The NASD is not very certain in its Decision about deposit requirement: "Respondents failed to take appropriate steps after its initial computation **at** June 30, 1974" (not made at June 30, 1974). Later stating ". . . even after Respondents were able to compute the reserve requirement." (as shown in 7. (a) above ". . . the additional deposits were not even made." But the necessary deposit was made July 11, 1974 jointly in connection with a withdrawal computation. A simplification of this procedure would have been to deposit $37,923.56 then even date a check out of the Account $15,695,34, leaving a net addition to the account of $22,228.22. The deposit **as of** June 30, 1974 was made. Evidently, NASD does not recognize withdrawal computations as the one **as of** July 10, 1974, Rule 15c 3-3 (g), page 16.

(c.) Alleged "cautions", not proven, were possibly in 1973, not 1974, when Respondents were trying with difficulty to establish a "Special Reserve Account for Benefit of Customers" (our bank's attorney still wants to know what customer the bank is liable to - a good question).

(d.) Penalties and alleged violations of "equitable principles of trade" have already been discussed above. Assessment of costs is not authenticated, neither penalties - a court function.

8. The deviation of all levels is appalling.

   (a.) NASD District avers responsibility - only doing what SEC requests and that computations were made **at** or **on** closing day of month, which is in error.

   (b.) NASD Board of Governors cannot overcome the District Committee but did assert Petitioner's responsibility to keep "in house" whatever books necessary, irrespective of stock exchange clearing activity reports, which is incorrect - even not recognized in SEC Release No. 12565, June 22, 1976.

   (c.) SEC states MCC Activity Reports are necessary but Petitioner "could get them faster" which was not possible nor the responsiblity of Petitioners. SEC Release No. 10756/April 26, 1974, page 2, ignored as applying to Petitioners, which is incorrect.

   (d.) Fifth Circuit denied "expertise" and merely endorsed the SEC Brief and opinion without inquiry.

   (e.) Without investigation and inquiry, the SEC denied appeal and returned to the NASD an obvious negation of the facts involved which is emphatically deplored.

9. The NASD Decision, September 22, 1975, though as customary in these Administration Hearings, had an "addition" not previously discussed or complained, that MCC data was not necessary for Respondents Computations and Compliance - that "in house" books were sufficient.

   (a.) That the MCC was an extraneous bookkeeping service is a new concept.

(b.) That Respondent should have its home office in Chicago for bookeeping is a "veiled" requirement.

(c.) That SEC Release No. 10756 is not available for Respondents transmissions from Chicago to Lubbock but available to another broker for branch data from Lubbock to Chicago is decidedly discrimatory, if so.

(d.) That, electronic posting was available in 1974 from MCC - Respondents could have gotten MCC Data faster (SEC Release No. 12565/June 22, 1976, Section IV, 10) "Applicants have the responsbility of keeping their records current" - "A number of out-of-town members of the Midwest use telecopier facilities, private express delivery, or telephonic communication with an agent in Chicago "Yet" reliance on outside services does not relieve them of that responsibility."

(e.) If the above is true, why SEC Release No. 10756 "Lag in transmission of data" necessary? Electronic original entry posting is not quite here in 1978 much less 1974.

10. "When unable to meet the deadline (for deposit) applicants are under a duty to notify us (i.e. Rule 15c 3-3 (i), to notify the Commission, SIPC and the regulatory authority for the broker-dealer - P. Appendix (j) page 16) as required by the rule." (SEC Brief in opposition, March 1978).

(a.) NASD Decisions would have you believe that the **"deadline"** for computations **at** the last day of the month - June 30, 1974 and for deposit by 10:00 a.m. 2nd hour after bank opening following the end of month, July 2, 1974.

(b.) Not only are these not possible, which regardless cannot be demanded, but the **"deadline"** is not at end of month for computation but **as of** end of month, whenever that is possible, and deposit by 10:00 a.m. the second following business day (after end of month) is not the deadline.

(c.) **These Decisions are not according to Rule 15c 3-3 (e) (3) but according to a false interpretation of the Rule from as of to at or on and more importantly, adding to the end "the second following business day" the words "of the month" which is false - a decision not according to the Rule 15c 3-3 (e) (3).**

11. "The basis for excluding the January instances appears to be that the SEC felt that the regulations were ambiguous enough to render petitioners' exclusion of prepayments from customers in their computations excusable. No deposits were therefore required for January 30 and May 31 and further discussion about them is not applicable." Fifth Circuit Decision, August 8, 1977, page 5a, (2).

SUMMARY OF ARGUMENT

Petitioners need an impartial vehicle, free to decide the true facts of this case and exact meanings of the SEC Releases involved.

1. SEC Release No. 9856, Rule 15c 3-3 (e) (3) page 15 provides for **as of** close of month computations, not **at** close of month as NASD decisions have been. Like an **as of** balance sheet, **as of** clearly means when applicable data is available and computable. Formula computations, complicated and time con-

suming, are necessarily made for determining, if any, deposit to a Special Reserve Account which is required no later than one hour after the opening of banking business on the second following business day. The NASD decisions and SEC have improperly added to the above - **following business day** the following words: "following the last business day of the month." This simply is not in the Rule as likewise **at** instead **as of.**

2. Petitioner's did not make computation **at** June 30, 1974, or any other **at** close of a month, could not have made and was not Rule required to make. P. Appendix (h) A8 - However A9 same Appendix (h), NASD, February 7, 1975, Decision, recognized the necessary later **as of** computation: " . . . after Respondents were **able** to compute the reserve requirement."
3. Petitioners were falsely accused in NASD Decision P. Appendix (h) A8: "Respondents failed to take appropriate steps?" We assume it is a deposit.)

   ". . . after Respondents were able to compute (actually July 9, 1974, as of June 30th) the reserve requirement . . . the additionally required deposits were not even made" is false as **Petitioners did make timely the deposit** July 11, 1974 - $37,923.56 as of June 30 less withdrawal of $15,695.34 as of July 10 to make a net deposit of $22,282.22 - P. Appendix (m) and (n).

4. SEC Release No. 10756/April 26, 1974, page 2 - "Time Lag in Transmission of Data", P. Appendix (k), is ignored in all NASD Decisions and later SEC "supporting briefs". Data from Midwest Clearing Corporation (MCC) is a most essential correspondent. SEC Release No. 10756 provided such data "be recorded no later than the day after the transaction is reported to the accounting department." MCC data, via Air Mail, for the close of month, June 30, 1974, arrived at Lubbock Post Office Saturday, July 6th, because like July 4, June 29 and 30th, July 6 and 7 were holidays which were extremely troublesome for MCC operation and Air Mail transportation. No computation at June 30, 1974, or any other end of month, can be made in view of these "excused" delays as provided by this SEC Release No. 10756.

5. If any alleged Rule 15c 3-3 (e) (3) violations are to be made the subject of a complaint, the complainant should have been Midwest Stock Exchange, which examined petition member as to financial responsibility, not NASD which did not have that responsibility, or the SEC or SIPC to whom any deposit infractions must be reported. NASD improperly was the complainant. Since this is Regulatory and not Penal, as stated by Fifth Circuit, page 5 a (3) last sentence, MSE, SEC, or SIPC, wisely do not have penalty powers - such as sanctions of censure, fines, etc., the SEC turned to NASD which it thought possibly does have penalty power.
6. NASD, a private corporation, does not legally have penalty powers. "The term 'penalty' in its broad sense, is a generic term which includes fines as well as other kinds of punishment, but in its narrowest sense, is the amount recovered for violation of the statute law . . ." Black's Law Dictionary. Penalty is a court responsibility, not an administrative one.
7. NASD Manual does not give its District Committees power as a complainant except for "an individual or member" for which it might act in its Code of Com-

plaint Procedure as if the Complaint had been filed by "an individual or member." What individual or member is involved in Tex No. 248 Complaint? **None.**

8. Additionally, NASD "Penalty" for violation of Article III, Rules of Fair Practice, Business Conduct of Members, refers to "trade conduct" - "shall observe high standards of commercial honor and just and equitable principles of trade." Rule 15c 3-3 (e) (3) is a regulation of setting aside a co-mingled, Special Reserve Bank Account for the benefit of customers, not identified, and does not involve a trade. This has no place in this case.

9. Repeated statements have been incorrectly made as to Petitioner's admission of "failure to deposit - none has been verified in substance or confronted in any hearing. P. 9, SEC Brief, March 1978 infers that William Whiteside testified January 7, 1975 in Dallas NASD Hearing: 'Now, yes we erred. I am not going to tell you we didn't err . . .", is incorrect. In the first place, William was not present there. Clarence K. Whiteside never made such a statement, even though there was some discussion as to completeness of computations such as including proprietory accounts which are errors that could only be alluded to. Strangely, Clarence K. Whiteside, who cassette recorded that hearing, could not find such a statement in replay of the recording.

10. The withholding from Petitioners of copies of Examination Reports and confidential meetings of District Committee, all of which Petitioners feel are infractions of the Freedom of Information Acts and has placed Petitioners to a disadvantage of what facts and Rules are being considered in Decision making not covered in so called hearings, where

nothing is subject to being proven as would be in a court procedure.

11. Since January and May, 1974 deposits were excused (Argument Item 11 above) they are not subject to further discussion.

12. These Decisions are not according to the wording of Rule 15c 3-3 (e) (3) in respect to alleged violations surrounding the **as of** computation for June 30, 1974 and the deposit which was timely made July 11, 1974.

13. The question is that Petitioner's need to be impartially heard on the basis of "substantial and convincing evidence."

CONCLUSION

1. Computations and Deposit alleged violations, if any, connected with Jan. 31 and May 31, 1974 were excused by the Securities and Exchange Commission. SEC Release No. 12565 and Fifth Circuit Per Curiam.

2. The facts relating to Computation and Deposit related to June 30, 1974 as given by NASD Decision, Tex No. 248, February 7, 1975, were incorrectly stated. Computation was not **at** June 30, 1974 but **as of** that day made on July 9, 1974 "when Petitioners were able to do" so properly and Deposit was timely made on July 11, 1974.

3. Interpretation of Rule 15c 3-3 (e) (3) was improperly made.

4. Furthermore, NASD was not accounting responsibility of Petitioners and therefore did not have Complaint authority.

5. NASD Manual does not give its District Committee authority of Complaint except performing for an individual or a member.

6. Assessment of Penalties, a Court procedure, was illegally made without authority NASD.

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